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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,326	09/25/2001	Arie Cornelis Besemer	1019219-000013	9428
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EXAMINER				
ANDERSON, CATHARINE L				
ART UNIT		PAPER NUMBER		
3764				
NOTIFICATION DATE		DELIVERY MODE		
11/16/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
offserv@bipc.com

### Office Action Summary

**Application No.**

09/937,326

**Applicant(s)**

BESEMER ET AL.

**Examiner**

LYNNE ANDERSON

**Art Unit**

3764

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-5, 9-11, 15-17, 19, 21 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5, 9-11, 15-17, 19, 21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-955a)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 August 2010 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 10 August 2010 have been fully considered but they are not persuasive.
3. In response to applicant's argument that Flexman is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Flexman teaches antimicrobial agents for use with absorbent materials. While the absorbent materials disclosed by Flexman are not the same as those disclosed by Blank, one would reasonably expect the antimicrobial agents taught by Flexman to achieve results if combined with the absorbent materials of Blank.
4. In response to the applicant's argument that Blank discloses additional agents and does not disclose an independently functioning antimicrobial agent, it is noted that

the present claims do not exclude the presence of additional agents in combination with the non-acidic compound. The present claims use open-ended transitional phrases such as 'containing' and 'comprising', which allow for the broad recitation of additional elements. Therefore, providing the antimicrobial taught by Flexman in addition to the additional agents disclosed by Blank is within the scope of the claims as presently written.

5. In response to the applicant's argument that neither Flexman nor Blank teach maintaining the pH of the article, it is noted that the applicant appears to be arguing that the addition of lactide functions as a neutralizing agent, thus stabilizing the pH of the article. The neutralizing functionality of lactide is inherent to its chemical structure, and therefore the addition of lactide to the article of Blank based on the teaching of Flexman would inherently function to maintain the pH of the article and reduce skin irritation. This advantage does not need to be derived from the teaching of Flexman, since Flexman discloses another advantage to the inclusion of lactide.

6. In response to applicant's argument that Flexman does not contemplate issues of pH and skin irritation, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 3-5, 9-11, 15-17, 19, 21, and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blank et al. (5,045,322) in view of Flexman et al.

(5,498,650).

9. Blank discloses all aspects of the claimed invention with the exception of the non-acidic compound being a cyclic lactide. Blank discloses a superabsorbent material comprising a superabsorbent polymer, as described in column 1, lines 15-22. The superabsorbent material contains an antimicrobial agent to control odors, as disclosed in column 1, lines 15-22. The antimicrobial agent homogenously mixed with the superabsorbent material, and is present in the amount of 5-10% by weight, as disclosed in column 8, Examples I and II. The superabsorbent material is for use in hygiene products such as diapers and sanitary napkins, as disclosed in column 7, lines 61-64.

10. Flexman teaches the use of lactides, which are a cyclic lactide, as an antimicrobial agent, as disclosed in column 1, lines 65-67. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the superabsorbent material of Blank with lactide, as taught by Flexman, to provide the predictable result of imparting antimicrobial properties to the superabsorbent material.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNNE ANDERSON whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lynne Anderson/  
Examiner, Art Unit 3764